

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Michael Martin

v.

Case No. 11-cv-376-PB

United States of America

O R D E R

Martin's ineffective assistance of counsel claim is barred by the statute of limitations because, without justification, he waited more than a year after his conviction became final to present his claim. His Fair Sentencing Act Claim is also time barred, both because he does not have a viable claim that he was "actually innocent" based the passage of the act, and because the passage of the act is not a fact that extends the limitation period. Finally, his claim for relief based on a change of the sentencing guidelines is a nonstarter because his sentence was not based on the guidelines. In reaching these conclusions, I am persuaded by the reasoning expressed in the government's

memorandum in support of its motion to dismiss. The motion to dismiss (Doc. No. 4) is granted.

Petitioner's motion to vacate sentence under 28 U.S.C. § 2255 (Doc. No. 1) is denied. Because I determine that plaintiff has failed to make a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Rule 11, Rules Governing Habeas Corpus Cases Under Section 2254; First Cir. LR 22.0.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

October 7, 2011

cc: Michael Martin, pro se
Seth Aframe, Esq.